

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2002 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -

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3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

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DINESH KUMAR NARSINHDAS SOMAVI

Versus

KALOL MUNICIPALITY

Appearance:

MRS DT SHAH for Petitioner

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 28/01/99

ORAL JUDGEMENT

This petition has been filed for quashing the resolution dated 11-2-1986 passed by the respondent No. 1 - Kalol Municipality, Kalol, District Mahesana, whereby respondent no. 3 Chandubhai Shankerbhai Makwana has been appointed on the post of chrg operator.

2. The petitioner was an employee of the respondent no.1 Municipality since 8-1-1985 as a work charge operator on drainage pumping station and he also worked a daily wagger from time to time and from 20--3-1986 to

29-3-1986 and the petitioner was asked to come on duty after break of eight days. However, he was not given any assignment on 5-4-1986. He was again called on 8-4-86. Meanwhile, by the impugned resolution the respondent no. 3 has been appointed on the clear vacancy of S.M. Makwana who expired though the petitioner was entitled to that post on the basis of the seniority list. The petitioner is still working as "Badali" worker in the respondent no. 1. But he has neither been absorbed nor he has been appointed on the regular post.

3. No one has appeared on behalf of the respondents.

Heard the learned counsel for the petitioner. Learned counsel for the petitioner contended that on the basis of the seniority list only the petitioner is entitled to be appointed on the post on which the respondent no.3 has been appointed. The petitioner is senior most but he has neither been appointed nor he has been absorbed in the regular cadre of operator of drainage pumping station. Learned counsel for the petitioner has relied upon the decision of this Court delivered on 14-12-1983 in Special Civil Application No. 5649 of 1983 whereby the respondent no. 1 - Kalol Municipality had agreed to maintain the seniority list while considering the question of making daily wage workers permanent and on the basis of that seniority only daily wage workers were required to be made permanent. The petitioner of that petition was senior most to the respondents no.2, 4 and 5 of that petition and hence this Court directed the respondent - Kalol Municipality to absorb the said petitioner on the permanent basis considering his case on the basis of the seniority.

4. I have given my anxious thoughts to the submissions made on behalf of the petitioner. In the present case, it does not appear that any seniority list was prepared. But the learned counsel for the petitioner states that the petitioner is still working as "Badali" worker and still however he has not been absorbed in the regular category of post. From the record, it does not appear that any seniority list is prepared. Hence, it cannot be said that the petitioner is senior most or he is entitled to be appointed on the regular post. However, the petitioner may represent his case before the respondent no.1 - Kalol Municipality for his regularization on his post and if such a representation is made the respondent no. 1 - Kalol Municipality will decide the representation of the petitioner in accordance with Rules and Regulations as well as seniority list, if any, and also in light of the observations made in the judgment delivered in Special Civil Application No. 5649

of 1983.

5. Accordingly, this petition is disposed of with a direction to the respondent no.1 - Kalol Municipality that in case the petitioner makes a representation within three weeks before the respondent 1 for his absorption and regularization on the post of operator of drainage pumping station, the respondent no.1 - Kalol Municipality will decide the same within a month thereafter in accordance with the Rules & Regulations and seniority list, if any, as well as in light of the observations made in the judgment delivered by this Court in Special Civil Application No. 5649 of 1983 by a speaking order. Rule is made absolute to the aforesaid extent, with no order as to costs. Interim order, if any, stands vacated.

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/JVSatwara/2